

Attorneys for Plaintiffs ISMAEL JIMENEZ, YOLANDA JIMENEZ, ANGELES JIMENEZ,
ANTONIO JIMENEZ, CARMENTINA HERRERA, LUIS ALVAREZ, EBARISTO ALAVEZ,
JOSEFA JIMENEZ, JESUCITA ORTIZ, RODOLFO ROBLES, and PROJECT SENTINEL

ISMAEL JIMENEZ, YOLANDA JIMENEZ,) **Case No. 5:16-CV-04434-EJD**
ANGELES JIMENEZ, ANTONIO)
JIMENEZ, CARMENTINA HERRERA,) **PLAINTIFFS' OBJECTIONS AND**
LUIS ALVAREZ, EBARISTO ALAVEZ,) **OPPOSITION TO DEFENDANTS'**
JOSEFA JIMENEZ, JESUCITA ORTIZ,) **SUPPLEMENTAL DISCOVERY DISPUTE**
RODOLFO ROBLES, and PROJECT) **REPORT NO. 2 AND REQUEST FOR**
SENTINEL, a California non-profit) **SANCTIONS**
corporation, on behalf of itself and the)
general public,)

Defendants.

Plaintiffs hereby submit the following objections and opposition to Defendants' Supplemental Discovery Dispute Report No. 2, submitted September 29, 2017. (ECF# 94.) Defendants' Supplemental Discovery Dispute Report No. 2 should be disregarded entirely because Defendants failed to follow this Court's Standing Order regarding Civil Discovery Disputes. Defendants' demands for additional depositions, including depositions of children, and a 1-month extension of the fact discovery period to accommodate these depositions, should also be dismissed because they are not proportional to the needs of the case.

I. Defendants Have Failed to Follow the Court's Standing Order Regarding Civil Discovery Disputes

First, the Court's Standing Order regarding Civil Discovery Disputes requires that the parties meet and confer IN PERSON to attempt to resolve the matter. Standing Order Re: Civil Discovery Disputes, M.J. H.R. Lloyd ("Standing Order"), 2.C. Defendants have failed to even notify Plaintiffs of their request for additional depositions outside of the fifteen depositions Judge Davilla permitted at the Court's Discovery Hearing before filing their Supplemental Discovery Report. In their Report, Defendants identify July 11, 2017, and July 19, 2017, as two dates that the parties met to discuss discovery disputes to be addressed by the discovery magistrate, and they also note the Discovery Hearing with Judge Davila on August 3, 2017. (ECF #94, 2:3-9.) Defendants' own description of previous meet and confer efforts reveals their failure to meet and confer on this topic in over two months, and since the Court's decision in the Discovery Hearing, which limited the number of depositions to 15. Per the Standing Order, Defendants must have met and conferred with Plaintiffs about their desire to conduct even more depositions before filing the Supplemental Report. Defendants' noncompliance with the Court's Standing Order based on the failure to meet and confer requires that their requests be rejected.¹

¹ The Standing Order provides that a Joint Report be prepared within 14 days following the last in person meeting of lead counsel. Standing Order, 2.D. Defendants' submission of a "supplemental" discovery dispute report over two months following the last in person meeting also fails to comply with this instruction.

1 Additionally, Defendants' "supplemental" report is not a joint report at all, and Plaintiffs
 2 were not afforded any opportunity to participate in its preparation. The Standing Order provides
 3 that "refusal to participate meaningfully in the preparation of the Joint Report is grounds for
 4 imposition of sanctions or entry of an order sought by the other side." Standing Order, 2.D.vi.
 5 Defendants did not allow Plaintiffs to meaningfully participate in the preparation of their report
 6 by failing to meet and confer about its contents, and by failing to even inform Plaintiffs that they
 7 would be filing the supplemental report. Because Defendants filed their supplemental report on
 8 their own, without consultation with Plaintiffs' counsel, the Court should consider imposing
 9 sanctions. Moreover, Defendants' failure to submit a Joint Report by instead unilaterally
 10 submitting a report is yet another deficiency in Defendants' submission that requires that their
 11 requests be rejected.

12 Lastly, the Standing Order states that "formal noticed discovery motions may no longer
 13 be filed and, if filed contrary to this order, will not be heard." See Standing Order 2.A.
 14 Defendants' unilateral discovery dispute report amounts to a motion to compel further discovery
 15 because it seeks permission from the Court to conduct additional discovery in excess of that
 16 permitted under the Federal Rules of Civil Procedure. Defendants' demands for additional
 17 discovery should not be heard.

18 **II. Defendants' Requests for Discovery in Excess of the Federal Rules Amount to an** 19 **Abuse of the Discovery Process**

20 Rule 26(b)(1) directs courts to limit the frequency or extent of use of discovery if they
 21 determine that "the discovery is unduly burdensome or expensive, taking into account the needs
 22 of the case, the amount in controversy, limitations on the parties' resources, and the importance
 23 of the issues at stake in the litigation." See Advisory Committee Notes, 2015 Amendment. The
 24 Rules thus require that discovery be proportional to the needs of the case. As noted by Judge
 25 Grewal, "a party seeking discovery of relevant, non-privileged information must show, before
 26 anything else, that the discovery sought is proportional to the needs of the case." Gilead Scis.,
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1 Inc. v. Merck & Co., Inc., No. 5:13-CV-04057-BLF, 2016 WL 146574, at *1 (N.D. Cal. Jan. 13,
2 2016).

3 The demand for even more depositions in the present case is not only unnecessary, but
4 further, it reaches beyond what is proportional to the needs of the case. Defendants have already
5 taken sixteen depositions (including of two different individuals under Rule 30(b)(6)). They
6 have deposed four children. Despite their claims that all ten Plaintiffs have different experiences
7 and different damages, they have not shown that their demands for additional depositions beyond
8 even the fifteen granted by the Court on August 3, 2017, are proportional to the needs of the
9 case. The Court expanded the number of depositions to fifteen, and Defendants chose not to
10 depose two of the named Plaintiffs. They cannot, at this time, argue that they should be able to
11 depose those named Plaintiffs when they had the opportunity to do so earlier. With regards to
12 the depositions of children, Plaintiffs have repeatedly told Defendants that they will only call two
13 children as witnesses, D.A. and E.R., both whose depositions have been taken.

14 Defendants' demands to depose even more people, including two additional children, are
15 unreasonable and untimely given the September 30, 2017, cutoff for fact discovery. Defendants
16 have been made aware of Plaintiffs' financial and logistical difficulties in getting time off work,
17 in securing child care, and in making transportation arrangements to be deposed far from their
18 Gilroy homes. While these things are part of participating in litigation, Defendants must not be
19 permitted to unnecessarily exceed the limits of discovery for purposes of abuse. Defendants'
20 demands only serve to harass and unnecessarily extend fact discovery despite previous
21 extensions and expansions of the discovery process. See Pretrial Order (ECF #69) (extending
22 cutoff for fact discovery from August 17, 2017 to September 30, 2017). Defendants' unilateral
23 demand for additional depositions must be denied as not proportional to the needs of the case.

24 **III. Conclusion**

25 For the reasons stated above, Defendants' Supplemental Discovery Dispute Report,
26 submitted in violation of this Court's Standing Order, must be disregarded entirely. Defendants'
27 demand for even more depositions should be dismissed because they are not proportional to the
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needs of the case. Additionally, Plaintiffs request that the Court sanction Defendants for their failure to meet and confer, and comply with the Standing Order, by striking their Supplemental Discovery Dispute Report.

Dated: October 2, 2017

FISH & RICHARDSON P.C.

LAW FOUNDATION OF SILICON
VALLEY

By: /s/ Matthew Warren
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CERTIFICATE OF SERVICE

I hereby certify that this document, and any exhibits and attachments thereto, has been filed through the CM/ECF system, so as to result in service upon all participants registered as ECF users by transmission of a Notice of Electronic Filing (NEF).

Dated: October 2, 2017

/s/ Matthew Warren
Matthew Warren